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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 MATTHEW G. SILVA, ) CASE NO. C04-1885-JLR-MAT  
09 Plaintiff, )  
10 v. ) ORDER RE: PLAINTIFF'S MOTION  
11 LARRY MAYES, et al., ) TO COMPEL  
12 Defendants. )  
13 \_\_\_\_\_ )

14 Plaintiff submitted a motion to compel, seeking responses to his second set of discovery  
15 requests. (Dkt. 209.) Defendants object to plaintiff's motion. (Dkts. 214 & 216.) For the  
16 reasons described below, the Court concludes that plaintiff's motion should be denied.

17 The Court twice extended the discovery deadline in this matter. First, upon plaintiff's  
18 motion, the Court granted a thirty-day extension of the discovery deadline – to June 2, 2005.  
19 (Dkt. 99.) Second, following plaintiff's request for a ninety-day continuance pursuant to Federal  
20 Rule of Civil Procedure 56(f), the Court granted an additional thirty-day extension of the  
21 discovery deadline, which, at that point, extended the deadline to September 30, 2005. (Dkt.  
22 196.) Plaintiff's request for a continuance included his desire to allow a response to a second set

01 of discovery requests, but rested in large part on his unsuccessful attempts to conduct depositions  
02 in this case. (*See* Dkt. 150-51.) (*See also* Dkt. 153 (simultaneously filed motion for contempt  
03 citations addressing ongoing dispute between the parties as to deposition procedures.))

04 In its order of August 31, 2005 granting plaintiff's motion for a Rule 56(f) continuance,  
05 the Court questioned whether plaintiff had diligently pursued discovery in this case and noted that  
06 plaintiff's motion failed to specify what specific facts precluding summary judgment additional  
07 discovery would yield. (Dkt. 196.) However, the Court nonetheless found a brief extension of  
08 the discovery deadline appropriate. (*Id.*) The Court stated that no additional extensions of the  
09 discovery deadline would be granted in this case and that all discovery must be completed by the  
10 final discovery deadline established by the order. ( *Id.*) In that same order, the Court also  
11 established a deadline of October 31, 2005 for any opposition to defendants' motion for summary  
12 judgment and requested supplemental briefing from the parties as to plaintiff's motion for partial  
13 summary judgment. (*Id.*)

14 In support of his motion to compel, plaintiff submits copies of two letters addressed to  
15 defense counsel and dated in October 2005 requesting a discovery conference regarding his second  
16 set of discovery requests. (*See* Dkt. 210.) He maintains that the Court's August 31, 2005 order  
17 essentially required defendants to answer his second set of discovery requests, and asserts that he  
18 was unable to file dispositive motions due to the "missing evidence" and that the "materials sought  
19 would uncover the actual intent of defendants in establishing D-unit conditions and in holding  
20 plaintiff there for nearly 18 months, amongst other things." (Dkt. 218 at 2 & 4.) (*See also* Dkt.  
21 219 at 3 (implying relevance of requested documents goes to the reasons behind the creation of  
22 the more restrictive conditions in the D-Unit of the Regional Justice Center (RJC).))

01 Defendants note that, after they received plaintiff's second set of discovery requests, the  
02 parties had a discovery conference in which defendants agreed to produce a substantial number  
03 of documents, and that they produced said documents on July 15, 2005, after plaintiff filed his  
04 Rule 56(f) motion for a continuance. They concede that, at some point in July 2005, plaintiff sent  
05 a follow-up letter concerning discovery, but state that, as they are unable to locate the letter in  
06 question, it is not clear whether it was sent before or after plaintiff's receipt of their July 15, 2005  
07 production. Defendants assert that plaintiff did not raise any concerns regarding the adequacy of  
08 the discovery provided during the second thirty-day extension of the discovery deadline, and  
09 confirm that they did not provide him with any additional discovery during that time period.

10 Defendants argue that, if plaintiff believed any relevant, material discovery remained  
11 outstanding after their July 15, 2005 production, he should have renewed his request after the  
12 Court's August 31, 2005 order. They add that there is no indication in the extensive supplemental  
13 briefing filed by plaintiff in November 2005 that he required additional discovery to present his  
14 arguments, and that it is unclear how additional discovery would help resolve this case.

15 As noted above, in its August 31, 2005 order, the Court found it questionable whether  
16 plaintiff had diligently pursued discovery in this matter. Indeed, the very discovery requests at  
17 issue had been submitted *after* the conclusion of the discovery deadline then in effect. (*See* Dkt.  
18 99 (setting discovery deadline for June 2, 2005) and Dkt. 151, Ex. 3 at 16 (plaintiff's second  
19 request for production of documents dated June 10, 2005.)) However, giving plaintiff the benefit  
20 of the doubt, and particularly given the ongoing controversy between the parties regarding  
21 deposition procedures (*see* Dkt. 196 at 1-6), the Court granted plaintiff one final extension of the  
22 discovery deadline in this matter.

01 Yet, instead of renewing his discovery requests or pursuing discovery by other means, it  
02 appears that plaintiff used this time to wait for a response to the discovery requests he had  
03 previously submitted in an untimely fashion. In turn, defendants assumed both that their July 15,  
04 2005 production was sufficient to meet their discovery obligations and that plaintiff would have  
05 renewed his discovery requests had he felt otherwise. Under the circumstances, including the fact  
06 of plaintiff's otherwise active and able litigation in this and other matters, the Court finds  
07 defendants' assumptions to have been reasonable. Additionally, the Court finds plaintiff's failure  
08 to renew his discovery requests or to pursue discovery by other means during this final extension  
09 of the discovery deadline to provide further foundation for the conclusion that he has not diligently  
10 pursued discovery in this case. This failure argues strongly against what would amount to a third  
11 extension of the discovery deadline.

12 Moreover, and critically, the Court concludes that the information sought would not help  
13 to resolve this case. Beyond generalizations, plaintiff exclusively stresses the relevance of the  
14 documents sought to the issue of the reasons behind the creation of the more restrictive conditions  
15 in the RJC's D-Unit. (*See* Dkts. 218-19.) Yet, as reflected in the Report and Recommendation  
16 issued as of this date, that issue is not relevant to the resolution of this case. Further, contrary to  
17 plaintiff's assertion, it does not appear that the apparent unavailability of at least some of the  
18 documents sought in his second set of discovery requests has in any respect hindered plaintiff in  
19 litigating this matter. Indeed, plaintiff's numerous filings in this case show that he has had a large  
20 volume of documents in his possession pertinent to his claims. (*See, e.g.*, Dkts. 11, 16, 82.)

21 In sum, the Court finds no basis for granting plaintiff's motion. Accordingly, his motion  
22 to compel is hereby DENIED. The Clerk is directed to send copies of this Order to plaintiff, to

01 counsel for defendants, and to the Hon. James L. Robart.

02 DATED this 17th day of January, 2005.

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04 Mary Alice Theiler  
05 United States Magistrate Judge  
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